IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No. 1891 of 2006

Date of Decision: 17.8.2006

Sushil Kumar

...Appellant.

Versus

Krishan Lal

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. U.K.Agnihotri, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

This regular second appeal filed by the defendant arises from a suit for mandatory injunction filed by the plaintiff-respondent directing the defendant to vacate the suit property and to hand over the vacant possession of the same to the plaintiff along with mesne profile for unauthorized occupation of the suit property at the rate of Rs.2000/- per month from the date of filing of the suit till its delivery.

The case of the plaintiff is that he is a pensioner having retired from Haryana State Electricity Board and is owner of the suit property bearing House No. 1880-A situated at Ram Nagar, Near Punjab National Bank, Baldev Nagar, Ambala City and is residing on the ground floor. It was pleaded that the said plot was purchased by him vide sale deed dated 26.9.1978 and he had constructed a double storey building over the same after completing the formalities. It was pleaded that the plaintiff had two sons and one daughter and that one son, namely, Pawan was residing

with the plaintiff. It was further pleaded that the plaintiff permitted the defendant to occupy the first floor as a licensee keeping in view the relation of father and son. It was further pleaded that when the relations between the parties did not improve and deteriorated due to misbehaviour of the defendant and his wife, the plaintiff requested the defendant to vacate the suit property and to hand over the vacant possession of the same to him but the defendant refused to vacate the same. Thereafter the plaintiff terminated the license of the defendant by serving a notice dated 10.11.2002 under Section 106 of the Transfer of Property Act.

Upon notice, defendant No.1 filed written statement by raising various preliminary objections. It was pleaded that the plaintiff, defendant and Pawan Kumar form a Joint Hindu Family and the house in question is the property of Joint Hindu Family. It was further pleaded that defendant also contributed in the construction of the house and as per family settlement, the first floor of the house was given to the defendant in his own right as owner and as such the defendant is not a licensee and no question of payment of any mesne profits arise. It was further pleaded that the plot was purchased by the grandfather of the defendant and the sale deed was executed in favour of the plaintiff being father and elder brother of the joint Hindu family. The other averments made in the plaint were denied and dismissal of the suit was prayed.

On the pleadings of the parties, the trial court framed the following issues:-

"1. Whether plaintiff is entitled to decree for mandatory injunction on the ground taken in the plaint? OPP

2. Whether suit of the plaintiff is not maintainable in the present form? OPD

3. Whether plaintiff has estopped by his own act and

conduct from fling the suit? OPD

4. Whether plaintiff has no cause of action in his favour? OPD

5. Relief."

The trial court after appreciating the evidence led by the parties under issue No.1 came to the conclusion that the defendant is in possession of the suit property as a licencee and his licence has been validly terminated and as such the plaintiff is entitled for possession of the suit property. Further, the plaintiff was also held to be entitled to mesne profits. On the basis of the aforesaid finding, the trial court decreed the suit of the plaintiff vide judgment and decree dated 25.5.2005. On appeal, the lower appellate court affirmed the findings recorded by the trial court and dismissed the appeal vide judgment and decree dated 7.1.2006.

Learned counsel for the appellant has made efforts to reappreciate the findings recorded by the courts below. However, he could not pin point any error in the concurrent findings of fact recorded by the courts below. No illegality or perversity could be found in the judgments and decrees passed by the courts below. No question of law, much less a substantial question of law arises in this appeal.

In view of the above, finding no merit in this appeal, the same is hereby dismissed.

August 17, 2006
gbs

(AJAY KUMAR MITTAL)
JUDGE